



97TH GENERAL ASSEMBLY

State of Illinois

2011 and 2012

SB3634

Introduced 2/10/2012, by Sen. Pamela J. Althoff

SYNOPSIS AS INTRODUCED:

30 ILCS 500/15-25
30 ILCS 500/20-120
30 ILCS 500/20-160
30 ILCS 500/50-35

Amends the Illinois Procurement Code. Provides that notice of each contract that is awarded shall be posted in the online electronic Illinois Procurement Bulletin for 7 days prior to the execution of the contract. Provides that, for construction agency procurements (now, for procurements subject to the authority of the chief procurement officer for the Department of Transportation), the contract shall include the names and addresses of all known subcontractors with subcontracts with an annual value of more than \$25,000. Provides that a copy of a certificate of registration filed with the State Board of Elections must be submitted to the State agency within 3 days after the submission deadline (now, must accompany any bid or proposal). Provides that all offers shall be accompanied by either a disclosure of financial interests or an affidavit stating that the most recent previous disclosure has not changed (now, shall be accompanied by a disclosure of financial interests). Provides that, when a bidder or offeror has previously disclosed a potential conflict of interest, and the circumstances have not materially changed for the current bid or offer under consideration, the bidder or offeror shall submit the Procurement Policy Board's previous written recommendation for the previous contract, bid, or offer, which shall automatically renew for the current bid or offer. Effective immediately.

LRB097 19814 PJG 65088 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning finance.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Illinois Procurement Code is amended by
5 changing Sections 15-25, 20-120, 20-160, and 50-35 as follows:

6 (30 ILCS 500/15-25)

7 Sec. 15-25. Bulletin content.

8 (a) Invitations for bids. Notice of each and every contract
9 that is offered, including renegotiated contracts and change
10 orders, shall be published in the Bulletin, and all businesses
11 listed on the Department of Transportation Disadvantaged
12 Business Enterprise Directory, the Department of Central
13 Management Services Business Enterprise Program and Small
14 Business Vendors Directory, and the Capital Development
15 Board's Directory of Certified Minority and Female Business
16 Enterprises shall be furnished written instructions and
17 information on how to register on each Procurement Bulletin
18 maintained by the State. Such information shall be provided to
19 each business within 30 days after the business' notice of
20 certification. The applicable chief procurement officer may
21 provide by rule an organized format for the publication of this
22 information, but in any case it must include at least the date
23 first offered, the date submission of offers is due, the

1 location that offers are to be submitted to, the purchasing
2 State agency, the responsible State purchasing officer, a brief
3 purchase description, the method of source selection,
4 information of how to obtain a comprehensive purchase
5 description and any disclosure and contract forms, and
6 encouragement to prospective vendors to hire qualified
7 veterans, as defined by Section 45-67 of this Code, and
8 qualified Illinois minorities, women, persons with
9 disabilities, and residents discharged from any Illinois adult
10 correctional center.

11 (b) Contracts let. Notice of each and every contract that
12 is let, including renegotiated contracts and change orders,
13 shall be issued electronically to those bidders or offerors
14 submitting responses to the solicitations, inclusive of the
15 unsuccessful bidders, immediately upon contract let. Failure
16 of any chief procurement officer to give such notice shall
17 result in tolling the time for filing a bid protest up to 5
18 business days. The apparent low bidder's award and all other
19 bids from bidders responding to solicitations shall be posted
20 on the agency's website the next business day.

21 (b-5) Contracts awarded. Notice of each and every contract
22 that is awarded, including renegotiated contracts and change
23 orders, shall be issued electronically to the successful
24 responsible bidder or offeror, posted on the agency's website
25 the next business day, and published in the next available
26 subsequent Bulletin. The applicable chief procurement officer

1 may provide by rule an organized format for the publication of
2 this information, but in any case it must include at least all
3 of the information specified in subsection (a) as well as the
4 name of the successful responsible bidder or offeror, the
5 contract price, the number of unsuccessful responsive bidders,
6 and any other disclosure specified in any Section of this Code.
7 This notice must be posted in the online electronic Bulletin
8 for 7 days prior to execution of the contract.

9 (c) Emergency purchase disclosure. Any chief procurement
10 officer or State purchasing officer exercising emergency
11 purchase authority under this Code shall publish a written
12 description and reasons and the total cost, if known, or an
13 estimate if unknown and the name of the responsible chief
14 procurement officer and State purchasing officer, and the
15 business or person contracted with for all emergency purchases
16 in the next timely, practicable Bulletin. This notice must be
17 posted in the online electronic Bulletin no later than 3
18 business days after the contract is awarded. Notice of a
19 hearing to extend an emergency contract must be posted in the
20 online electronic Procurement Bulletin no later than 5 business
21 days prior to the hearing.

22 (c-5) Business Enterprise Program report. Each purchasing
23 agency shall post in the online electronic Bulletin a copy of
24 its annual report of utilization of businesses owned by
25 minorities, females, and persons with disabilities as
26 submitted to the Business Enterprise Council for Minorities,

1 Females, and Persons with Disabilities pursuant to Section 6(c)
2 of the Business Enterprise for Minorities, Females, and Persons
3 with Disabilities Act within 10 business days after its
4 submission of its report to the Council.

5 (c-10) Renewals. Notice of each contract renewal shall be
6 posted in the online electronic Bulletin within 10 business
7 days of the determination to renew the contract and the next
8 available subsequent Bulletin. The notice shall include at
9 least all of the information required in subsection (b).

10 (c-15) Sole source procurements. Before entering into a
11 sole source contract, a chief procurement officer exercising
12 sole source procurement authority under this Code shall publish
13 a written description of intent to enter into a sole source
14 contract along with a description of the item to be procured
15 and the intended sole source contractor. This notice must be
16 posted in the online electronic Procurement Bulletin before a
17 sole source contract is awarded and at least 14 days before the
18 hearing required by Section 20-25.

19 (d) Other required disclosure. The applicable chief
20 procurement officer shall provide by rule for the organized
21 publication of all other disclosure required in other Sections
22 of this Code in a timely manner.

23 (e) The changes to subsections (b), (c), (c-5), (c-10), and
24 (c-15) of this Section made by this amendatory Act of the 96th
25 General Assembly apply to reports submitted, offers made, and
26 notices on contracts executed on or after its effective date.

1 (f) The Department of Central Management Services, the
2 Capital Development Board, the Department of Transportation,
3 and the higher education chief procurement officer shall
4 provide the Procurement Policy Board with the information and
5 resources necessary, and in a manner, to effectuate the purpose
6 of this amendatory Act of the 96th General Assembly.

7 (Source: P.A. 95-536, eff. 1-1-08; 96-795, eff. 7-1-10 (see
8 Section 5 of P.A. 96-793 for the effective date of changes made
9 by P.A. 96-795); 96-1444, eff. 8-20-10.)

10 (30 ILCS 500/20-120)

11 Sec. 20-120. Subcontractors.

12 (a) Any contract granted under this Code shall state
13 whether the services of a subcontractor will or may be used.
14 The contract shall include the names and addresses of all known
15 subcontractors with subcontracts with an annual value of more
16 than \$25,000 and the expected amount of money each will receive
17 under the contract. For construction agency procurements
18 ~~subject to the authority of the chief procurement officer~~
19 ~~appointed pursuant to subsection (a) (2) of Section 10-20,~~ the
20 contract shall include only the names and addresses of all
21 known subcontractors of the primary contractor with
22 subcontracts with an annual value of more than \$25,000. The
23 contractor shall provide the chief procurement officer or State
24 purchasing officer a copy of any subcontract with an annual
25 value of more than \$25,000 so identified within 20 days after

1 the execution of the State contract or after execution of the
2 subcontract, whichever is later. A subcontractor, or
3 contractor on behalf of a subcontractor, may identify
4 information that is deemed proprietary or confidential. If the
5 chief procurement officer determines the information is not
6 relevant to the primary contract, the chief procurement officer
7 may excuse the inclusion of the information. If the chief
8 procurement officer determines the information is proprietary
9 or could harm the business interest of the subcontractor, the
10 chief procurement officer may, in his or her discretion, redact
11 the information. Redacted information shall not become part of
12 the public record.

13 (b) If at any time during the term of a contract, a
14 contractor adds or changes any subcontractors, he or she shall
15 promptly notify, in writing, the chief procurement officer,
16 State purchasing officer, or their designee of the names and
17 addresses and the expected amount of money each new or replaced
18 subcontractor will receive. The contractor shall provide to the
19 responsible chief procurement officer a copy of the subcontract
20 within 20 days after the execution of the subcontract.

21 (c) In addition to any other requirements of this Code, a
22 subcontract subject to this Section must include all of the
23 subcontractor's certifications required by Article 50 of the
24 Code.

25 (d) This Section applies to procurements solicited on or
26 after the effective date of this amendatory Act of the 96th

1 General Assembly.

2 (Source: P.A. 96-795, eff. 7-1-10 (see Section 5 of P.A. 96-793
3 for the effective date of P.A. 96-795); 96-920, eff. 7-1-10.)

4 (30 ILCS 500/20-160)

5 Sec. 20-160. Business entities; certification;
6 registration with the State Board of Elections.

7 (a) For purposes of this Section, the terms "business
8 entity", "contract", "State contract", "contract with a State
9 agency", "State agency", "affiliated entity", and "affiliated
10 person" have the meanings ascribed to those terms in Section
11 50-37.

12 (b) Every bid submitted to and every contract executed by
13 the State on or after January 1, 2009 (the effective date of
14 Public Act 95-971) shall contain (1) a certification by the
15 bidder or contractor that either (i) the bidder or contractor
16 is not required to register as a business entity with the State
17 Board of Elections pursuant to this Section or (ii) the bidder
18 or contractor has registered as a business entity with the
19 State Board of Elections and acknowledges a continuing duty to
20 update the registration and (2) a statement that the contract
21 is voidable under Section 50-60 for the bidder's or
22 contractor's failure to comply with this Section.

23 (c) Within 30 days after the effective date of this
24 amendatory Act of the 95th General Assembly, each business
25 entity (i) whose aggregate bids and proposals on State

1 contracts annually total more than \$50,000, (ii) whose
2 aggregate bids and proposals on State contracts combined with
3 the business entity's aggregate annual total value of State
4 contracts exceed \$50,000, or (iii) whose contracts with State
5 agencies, in the aggregate, annually total more than \$50,000
6 shall register with the State Board of Elections in accordance
7 with Section 9-35 of the Election Code. A business entity
8 required to register under this subsection shall submit a copy
9 of the certificate of registration to the applicable chief
10 procurement officer within 90 days after the effective date of
11 this amendatory Act of the 95th General Assembly. A business
12 entity required to register under this subsection due to item
13 (i) or (ii) has a continuing duty to ensure that the
14 registration is accurate during the period beginning on the
15 date of registration and ending on the day after the date the
16 contract is awarded; any change in information must be reported
17 to the State Board of Elections 5 business days following such
18 change or no later than a day before the contract is awarded,
19 whichever date is earlier. A business entity required to
20 register under this subsection due to item (iii) has a
21 continuing duty to ensure that the registration is accurate in
22 accordance with subsection (e).

23 (d) Any business entity, not required under subsection (c)
24 to register within 30 days after the effective date of this
25 amendatory Act of the 95th General Assembly, whose aggregate
26 bids and proposals on State contracts annually total more than

1 \$50,000, or whose aggregate bids and proposals on State
2 contracts combined with the business entity's aggregate annual
3 total value of State contracts exceed \$50,000, shall register
4 with the State Board of Elections in accordance with Section
5 9-35 of the Election Code prior to submitting to a State agency
6 the bid or proposal whose value causes the business entity to
7 fall within the monetary description of this subsection. A
8 business entity required to register under this subsection has
9 a continuing duty to ensure that the registration is accurate
10 during the period beginning on the date of registration and
11 ending on the day after the date the contract is awarded. Any
12 change in information must be reported to the State Board of
13 Elections within 5 business days following such change or no
14 later than a day before the contract is awarded, whichever date
15 is earlier.

16 (e) A business entity whose contracts with State agencies,
17 in the aggregate, annually total more than \$50,000 must
18 maintain its registration under this Section and has a
19 continuing duty to ensure that the registration is accurate for
20 the duration of the term of office of the incumbent
21 officeholder awarding the contracts or for a period of 2 years
22 following the expiration or termination of the contracts,
23 whichever is longer. A business entity, required to register
24 under this subsection, has a continuing duty to report any
25 changes on a quarterly basis to the State Board of Elections
26 within 10 business days following the last day of January,

1 April, July, and October of each year. Any update pursuant to
2 this paragraph that is received beyond that date is presumed
3 late and the civil penalty authorized by subsection (e) of
4 Section 9-35 of the Election Code (10 ILCS 5/9-35) may be
5 assessed.

6 Also, if a business entity required to register under this
7 subsection has a pending bid or proposal, any change in
8 information shall be reported to the State Board of Elections
9 within 5 business days following such change or no later than a
10 day before the contract is awarded, whichever date is earlier.

11 (f) A business entity's continuing duty under this Section
12 to ensure the accuracy of its registration includes the
13 requirement that the business entity notify the State Board of
14 Elections of any change in information, including but not
15 limited to changes of affiliated entities or affiliated
16 persons.

17 (g) A copy of a certificate of registration must be
18 submitted to the State agency within 3 business days following
19 the submission deadline for ~~accompany~~ any bid or proposal for a
20 contract with a State agency by a business entity required to
21 register under this Section. A chief procurement officer shall
22 not accept a bid or proposal unless the certificate is
23 submitted to the agency within 3 business days after submission
24 deadline for ~~with~~ the bid or proposal. Bids or offers on
25 construction or construction-related services for construction
26 agencies may satisfy the requirements of this subsection by

1 submitting a copy of the certificate during the
2 prequalification application process.

3 (h) A registration, and any changes to a registration, must
4 include the business entity's verification of accuracy and
5 subjects the business entity to the penalties of the laws of
6 this State for perjury.

7 In addition to any penalty under Section 9-35 of the
8 Election Code, intentional, willful, or material failure to
9 disclose information required for registration shall render
10 the contract, bid, proposal, or other procurement relationship
11 voidable by the chief procurement officer if he or she deems it
12 to be in the best interest of the State of Illinois.

13 (i) This Section applies regardless of the method of source
14 selection used in awarding the contract.

15 (Source: P.A. 96-795, eff. 7-1-10 (see Section 5 of P.A. 96-793
16 for the effective date of changes made by P.A. 96-795); 96-848,
17 eff. 1-1-10; 97-333, eff. 8-12-11.)

18 (30 ILCS 500/50-35)

19 Sec. 50-35. Financial disclosure and potential conflicts
20 of interest.

21 (a) All offers from responsive bidders or offerors with an
22 annual value of more than \$25,000, and all subcontracts
23 identified as provided by Section 20-120 of this Code, shall be
24 accompanied by either (i) a disclosure of the financial
25 interests of the contractor, bidder, or proposer and each

1 subcontractor to be used or (ii) an affidavit, including a copy
2 of the most recent financial disclosure, stating that the most
3 recent previous disclosure has not changed, provided that no
4 potential conflict of interest was identified pursuant to
5 subsection (d). The financial disclosure or affidavit of each
6 successful bidder or offeror and its subcontractors shall be
7 incorporated as a material term of the contract and shall
8 become part of the publicly available contract or procurement
9 file maintained by the appropriate chief procurement officer.
10 Each disclosure or affidavit under this Section and Section
11 50-34 shall be signed and made under penalty of perjury by an
12 authorized officer or employee on behalf of the bidder or
13 offeror, and must be filed with the Procurement Policy Board.
14 The Procurement Policy Board shall create a repository of
15 current financial disclosures and affidavits accessible and
16 searchable by State agencies subject to this Code.

17 (b) Disclosure shall include any ownership or distributive
18 income share that is in excess of 5%, or an amount greater than
19 60% of the annual salary of the Governor, of the disclosing
20 entity or its parent entity, whichever is less, unless the
21 contractor, bidder, or subcontractor (i) is a publicly traded
22 entity subject to Federal 10K reporting, in which case it may
23 submit its 10K disclosure in place of the prescribed
24 disclosure, or (ii) is a privately held entity that is exempt
25 from Federal 10k reporting but has more than 200 shareholders,
26 in which case it may submit the information that Federal 10k

1 reporting companies are required to report under 17 CFR 229.401
2 and list the names of any person or entity holding any
3 ownership share that is in excess of 5% in place of the
4 prescribed disclosure. The form of disclosure shall be
5 prescribed by the applicable chief procurement officer and must
6 include at least the names, addresses, and dollar or
7 proportionate share of ownership of each person identified in
8 this Section, their instrument of ownership or beneficial
9 relationship, and notice of any potential conflict of interest
10 resulting from the current ownership or beneficial
11 relationship of each person identified in this Section having
12 in addition any of the following relationships:

13 (1) State employment, currently or in the previous 3
14 years, including contractual employment of services.

15 (2) State employment of spouse, father, mother, son, or
16 daughter, including contractual employment for services in
17 the previous 2 years.

18 (3) Elective status; the holding of elective office of
19 the State of Illinois, the government of the United States,
20 any unit of local government authorized by the Constitution
21 of the State of Illinois or the statutes of the State of
22 Illinois currently or in the previous 3 years.

23 (4) Relationship to anyone holding elective office
24 currently or in the previous 2 years; spouse, father,
25 mother, son, or daughter.

26 (5) Appointive office; the holding of any appointive

1 government office of the State of Illinois, the United
2 States of America, or any unit of local government
3 authorized by the Constitution of the State of Illinois or
4 the statutes of the State of Illinois, which office
5 entitles the holder to compensation in excess of expenses
6 incurred in the discharge of that office currently or in
7 the previous 3 years.

8 (6) Relationship to anyone holding appointive office
9 currently or in the previous 2 years; spouse, father,
10 mother, son, or daughter.

11 (7) Employment, currently or in the previous 3 years,
12 as or by any registered lobbyist of the State government.

13 (8) Relationship to anyone who is or was a registered
14 lobbyist in the previous 2 years; spouse, father, mother,
15 son, or daughter.

16 (9) Compensated employment, currently or in the
17 previous 3 years, by any registered election or re-election
18 committee registered with the Secretary of State or any
19 county clerk in the State of Illinois, or any political
20 action committee registered with either the Secretary of
21 State or the Federal Board of Elections.

22 (10) Relationship to anyone; spouse, father, mother,
23 son, or daughter; who is or was a compensated employee in
24 the last 2 years of any registered election or re-election
25 committee registered with the Secretary of State or any
26 county clerk in the State of Illinois, or any political

1 action committee registered with either the Secretary of
2 State or the Federal Board of Elections.

3 (b-1) The disclosure required under this Section must also
4 include the name and address of each lobbyist required to
5 register under the Lobbyist Registration Act and other agent of
6 the bidder or offeror who is not identified under subsections
7 (a) and (b) and who has communicated, is communicating, or may
8 communicate with any State officer or employee concerning the
9 bid or offer. The disclosure under this subsection is a
10 continuing obligation and must be promptly supplemented for
11 accuracy throughout the process and throughout the term of the
12 contract if the bid or offer is successful.

13 (b-2) The disclosure required under this Section must also
14 include, for each of the persons identified in subsection (b)
15 or (b-1), each of the following that occurred within the
16 previous 10 years: debarment from contracting with any
17 governmental entity; professional licensure discipline;
18 bankruptcies; adverse civil judgments and administrative
19 findings; and criminal felony convictions. The disclosure
20 under this subsection is a continuing obligation and must be
21 promptly supplemented for accuracy throughout the process and
22 throughout the term of the contract if the bid or offer is
23 successful.

24 (c) The disclosure in subsection (b) is not intended to
25 prohibit or prevent any contract. The disclosure is meant to
26 fully and publicly disclose any potential conflict to the chief

1 procurement officers, State purchasing officers, their
2 designees, and executive officers so they may adequately
3 discharge their duty to protect the State.

4 (d) When a potential for a conflict of interest is
5 identified, discovered, or reasonably suspected, the chief
6 procurement officer or State procurement officer shall send the
7 contract to the Procurement Policy Board. The Board shall
8 recommend, in a written statement to the bidder or offeror and
9 the State agency writing, whether to allow or void the
10 contract, bid, offer, or subcontract weighing the best interest
11 of the State of Illinois. All recommendations shall be
12 submitted to the chief procurement officer. The chief
13 procurement officer must hold a public hearing if the
14 Procurement Policy Board makes a recommendation to (i) void a
15 contract or (ii) void a bid or offer and the chief procurement
16 officer selected or intends to award the contract to the bidder
17 or offeror. A chief procurement officer is prohibited from
18 awarding a contract before a hearing if the Board
19 recommendation does not support a bid or offer. The
20 recommendation and proceedings of any hearing, if applicable,
21 shall become part of the contract, bid, or proposal file and
22 shall be available to the public. When a bidder, offeror, or
23 subcontractor has previously disclosed a potential conflict of
24 interest, and the circumstances of that potential conflict have
25 not materially changed for the current bid, offer, or
26 subcontract under consideration, the bidder or offeror shall

1 submit the written recommendation by the Board allowing the
2 previous contract, bid, offer, or subcontract, and that
3 recommendation shall automatically renew for the current bid,
4 offer, or subcontract.

5 (e) These thresholds and disclosure do not relieve the
6 chief procurement officer, the State purchasing officer, or
7 their designees from reasonable care and diligence for any
8 contract, bid, offer, or proposal. The chief procurement
9 officer, the State purchasing officer, or their designees shall
10 be responsible for using any reasonably known and publicly
11 available information to discover any undisclosed potential
12 conflict of interest and act to protect the best interest of
13 the State of Illinois.

14 (f) Inadvertent or accidental failure to fully disclose
15 shall render the contract, bid, proposal, subcontract, or
16 relationship voidable by the chief procurement officer if he or
17 she deems it in the best interest of the State of Illinois and,
18 at his or her discretion, may be cause for barring from future
19 contracts, bids, proposals, subcontracts, or relationships
20 with the State for a period of up to 2 years.

21 (g) Intentional, willful, or material failure to disclose
22 shall render the contract, bid, proposal, subcontract, or
23 relationship voidable by the chief procurement officer if he or
24 she deems it in the best interest of the State of Illinois and
25 shall result in debarment from future contracts, bids,
26 proposals, subcontracts, or relationships for a period of not

1 less than 2 years and not more than 10 years. Reinstatement
2 after 2 years and before 10 years must be reviewed and
3 commented on in writing by the Governor of the State of
4 Illinois, or by an executive ethics board or commission he or
5 she might designate. The comment shall be returned to the
6 responsible chief procurement officer who must rule in writing
7 whether and when to reinstate.

8 (h) In addition, all disclosures shall note any other
9 current or pending contracts, proposals, subcontracts, leases,
10 or other ongoing procurement relationships the bidding,
11 proposing, offering, or subcontracting entity has with any
12 other unit of State government and shall clearly identify the
13 unit and the contract, proposal, lease, or other relationship.

14 (i) The contractor or bidder has a continuing obligation to
15 supplement the disclosure required by this Section throughout
16 the bidding process or during the term of any contract.

17 (Source: P.A. 96-795, eff. 7-1-10 (see Section 5 of P.A. 96-793
18 for the effective date of changes made by P.A. 96-795); 96-920,
19 eff. 7-1-10; 97-490, eff. 8-22-11.)

20 Section 99. Effective date. This Act takes effect upon
21 becoming law.